

SUPREME COURT PENDING CASES

The following appeals are fully briefed and eligible for assignment by the Supreme Court in the near future.

THE RESERVE REALTY, LLC, et al. v. WINDEMERE RESERVE, LLC,
et al., SC 19979/19982

THE RESERVE REALTY, LLC, et al. v. BLT RESERVE, LLC,
et al., SC 19981

Judicial District of Danbury

Antitrust; Whether Appellate Court Properly Determined that Purchase and Sales Agreements Constituted Illegal Tying Arrangements; Whether Appellate Court Properly Affirmed Judgments Discharging Broker's Liens. The plaintiffs brought a breach of contract action against the defendant real estate developers, seeking to recover real estate brokerage fees they claimed they were entitled to under listing agreements that purported to give the plaintiffs the exclusive right to sell or lease some of the properties developed by the defendants. The plaintiffs also brought two actions seeking to foreclose broker's liens that they had recorded on the defendants' properties. The trial court found for the defendants in the breach of contract action, concluding that the purchase and sale agreements violated General Statutes § 35-29 of the Connecticut Antitrust Act, which proscribes acts that have the effect of substantially lessening competition or creating a monopoly. It determined that the agreements created an illegal tying arrangement, which is an agreement by a party to sell one product but only on the condition that the buyer also purchase a different "tied" product, or that the buyer at least agree not to purchase that product from another supplier. The trial court then found for the defendants in the foreclosure actions and discharged the broker's liens. The plaintiffs appealed, and the Appellate Court (174 Conn. App. 130) affirmed the judgments for the defendants. In doing so, it found that *State v. Hossan-Maxwell, Inc.*, 181 Conn. 655 (1980), was the controlling authority for evaluating a tying arrangement claim under § 35-29, notwithstanding certain federal case law that allegedly changed the interpretation of the federal statute on which § 35-29 was modeled. *Hossan-Maxwell* provides that tying arrangements are per se illegal under § 35-29 whenever the seller has sufficient economic power regarding the tying product to appreciably restrain free competition and a "not insubstantial" amount of interstate commerce is affected. The Appellate Court determined that, here, the trial court properly found that both conditions were met and that, in light of that conclusion, the plaintiffs could not establish probable cause

to sustain the validity of their broker's liens. The plaintiffs appeal, and the Supreme Court will decide whether the Appellate Court properly relied on *Hossan-Maxwell* in concluding that the purchase and sales agreements forming the basis for the plaintiffs' claim for real estate brokerage fees constituted an illegal tying arrangement in violation of the Connecticut Antitrust Act and whether, based on that conclusion, the Appellate Court properly affirmed the judgments for the defendants in the broker's lien foreclosure actions.

CAROLYNE Y. HYNES *v.* SHARON M. JONES, SC 20009
Judicial District of Stamford-Norwalk

Probate; Whether Minor Child's Share of September 11th Victim Compensation Fund Award Subject to Jurisdiction and Control of State Probate Courts. The plaintiff's husband (the decedent) was killed in the September 11, 2001 terrorist attacks. The plaintiff and the decedent had one minor child, and the plaintiff and the minor child each received over \$1 million from the September 11th Victim Compensation Fund. The plaintiff initiated estate administration proceedings in the Norwalk Probate Court, which appointed the defendant as the minor child's guardian ad litem and appointed the plaintiff the guardian of the child's estate and the administrator of the decedent's estate. The court did not, however, allow the plaintiff to use any of the child's award for the child's support. The plaintiff subsequently moved to dismiss the probate proceedings for lack of subject matter jurisdiction, claiming that the child no longer resided in the Norwalk probate district and that, as the child's award was paid directly to the plaintiff as the child's "representative payee," the funds were beyond the control of the Probate Court. The Probate Court denied the motion to dismiss, and the Superior Court dismissed the plaintiff's subsequent probate appeal, finding that the Probate Court had jurisdiction over the matter. The plaintiff appealed, and the Appellate Court (175 Conn. App. 80) affirmed the Superior Court's judgment. It found that the Probate Court had jurisdiction because the award to the child from the Victim Compensation Fund should be treated as an asset of the decedent's estate and that the Probate Court could assert jurisdiction and control over the award made for the benefit of the child because the child resided in the Norwalk Probate District when she first became entitled to the award. The plaintiff appeals, and the Supreme Court will determine whether the Appellate Court properly concluded that a September 11th Victim Compensation Fund award paid to a surviving spouse as a representative payee for the

benefit of a minor child is subject to the jurisdiction and control of Connecticut Probate Courts.

AUSTIN HAUGHWOUT v. LAURA TORDENTI et al., SC 20076

Judicial District of New Britain

Freedom of Speech; Whether College Student's Statements and Gestures Constituted True Threats. The plaintiff was expelled from Central Connecticut State University (CCSU), and he brought this action against CCSU officials claiming that his expulsion violated his constitutional right to freedom of speech and seeking that he be reinstated as a student. The plaintiff's expulsion stemmed from reports made by other students that he (1) made hand gestures as if he was aiming a gun and shooting at other students, (2) wondered aloud how many rounds he would need to shoot people at the school, (3) mentioned that he had bullets at his home and in his vehicle, (4) showed pictures of guns he owned and bragged about bringing a gun to school, (5) named a particular student as his "number one target," (6) made reference to a shooting at an Oregon community college where several students had been killed and stated that the Oregon shooting had "beat us," and (7) stated during a testing of the school's alarm system that "someone should really shoot up the school for real so it's not a drill." The trial court rendered judgment for the defendants, concluding that the plaintiff failed to prove that his free speech rights were violated. The court indicated that the right to freedom of speech is not absolute and that a person cannot utter what has come to be known as a "true threat" and claim the protection of either the federal or state constitution. It stated that a "true threat" encompasses those statements meant to communicate a serious expression of intent to commit an act of unlawful violence to a particular individual or group of individuals and that the speaker need not actually intend to carry out the threat. It further determined that the question of whether a statement may be considered a true threat is governed by an objective standard of whether a reasonable person would foresee that the statement would be interpreted as a serious expression of intent to harm or assault. The trial court found that the plaintiff's communications fit the definition of true threats and were certainly not statements that sought to communicate a belief or idea. It determined that although some students treated the plaintiff's communications as jokes, others reported being alarmed by the plaintiff's statements. It noted that gestures and statements like those made by the plaintiff on a college campus at such a time are the very kind of statements that any reason-

able person would foresee as creating fear on the part of fellow students. The plaintiff appeals, and the Supreme Court will determine whether the trial court properly concluded that his statements and gestures constituted true threats that were not constitutionally protected. The plaintiff argues that his words and gestures constituted either political commentary or grim humor and that they were protected under free speech principles.

The summaries appearing here are not intended to represent a comprehensive statement of the facts of the case, nor an exhaustive inventory of issues raised on appeal. These summaries are prepared by the Staff Attorneys' Office for the convenience of the bar. They in no way indicate the Supreme Court's view of the factual or legal aspects of the appeal.

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